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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,133	12/15/2003	Stephen T. Flock	D6462CIP	3622

7590
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08/16/2007

EXAMINER

ROANE, AARON F

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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08/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/736,133	FLOCK ET AL.	
	Examiner	Art Unit	
	Aaron Roane	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-40, 42-50, 70 and 71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-40, 42-50, 70 and 71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-40, 45-49 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flomenbilt et al. (USPN 5,562,641) in view of Healy et al. (USPN 5,670,161).

Regarding claims 37, 38, 45 and 71, Flomenbilt et al. disclose a device for the treatment of tissue, comprising: a radiofrequency power supply (see col. 5, lines 27-48); an antenna (62) connected to said radiofrequency power supply; an energy absorbing species (32), see col. 4-5 and figures 1-10. Flomenbilt et al. fail to disclose a reactant. Healy et al. disclose a treatment system including a biodegradable stent and teach providing the stent with a coating comprising a drug in order to enhance the therapeutic effects, see col. 10, lines 10-48 and figures 1-5. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Flomenbilt et al., as

taught by Healy et al., to provide the stent with a coating comprising a drug in order to enhance the therapeutic effects.

Regarding claim 39, Flomenbilt et al. further disclose the device capable of the recited function. The recitation that the substrates are intended use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claim 40, Flomenbilt et al. disclose RF energy. Radio frequency (RF) ranges from 3 Hz to 30GHz.

Regarding claims 46-48, Flomenbilt et al. disclose the claimed invention, as the stent disclosed a) has a non-zero electrical conductivity, b) is inherently either diamagnetic, paramagnetic or ferromagnetic and c) is ionomer, a conducting polymer, an alkali metal, a transition metal, a lanthanide, or a metalloid or a combination thereof, see col. 2, line 62 through col. 7, line 24.

Regarding claim 49, Flomenbilt et al. further disclose the “stent of the can be made of a wide variety of a two-way shape memory alloy such as Ni-Ti binary alloy, known as “nitinol”, Ni-Ti-X (X being V, Co, Cu, Fe) ternary alloy, Cu-Al-Ni ternary alloy, or Cu-Zn-Al ternary alloy,” see col. 2, line 62 through col. 3, line 1.

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Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flomenbilt et al. (USPN 5,562,641) in view of Healy et al. (USPN 5,670,161) as applied to claim 37 above, and further in view of Rudie (USPN 6,032,078).

Regarding claim 42, Flomenbilt et al. in view of Healy et al. disclose the claimed invention except for disclosing that the antenna comprises at least one electrical conductor. Rudie discloses a catheter device and teaches providing the catheter with an antenna comprising a flat ribbon wire (140), in order to delivery RF energy, see col. 9-10 and figures 1-11. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Flomenbilt et al. in view of Healy et al., as taught by Rudie, to provide the catheter with an antenna comprising a flat ribbon wire in order to delivery RF energy.

Regarding claim 43, Flomenbilt et al. in view of Healy et al. in further view of Rudie disclose the claimed invention, see Rudie, the solid ribbon wire (140), col. 9-10 and figures 1-11.

Regarding claim 44, Flomenbilt et al. in view of Healy et al. in further view of Rudie disclose the claimed invention. The helical ribbon wire (140) is non planar, see col. 9-10 and figures 1-11.

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Claims 50 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flomenbilt et al. (USPN 5,562,641) in view of Healy et al. (USPN 5,670,161) as applied to claim 37 above, and further in view of Pinchuk et al. (USPN 6,545,097).

Regarding claims 50 and 70, Flomenbilt et al. in view of Healy et al. disclose the claimed invention except for the a polystyrene encapsulated metal particle. Flomenbilt et al. in view of Healy et al. also fail to disclose the reactant is a protein, a lipid, a nucleic acid, or a carbohydrate. Pinchuk et al. disclose a drug delivery composition and method and teach coating stents with polystyrene-polyisobutylene-polystyrene copolymer and paclitaxel in varying ratios in order to vary the rates of drug release, see col. 19, line 65 through col. 20, line 14. Pinchuk et al. also teach a wide variety of therapeutic agents including proteins as candidates for vascular treatments, see col. 11 and 12. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Flomenbilt et al. in view of Healy et al., as taught by Pinchuk et al., to coat the stents with polystyrene-polyisobutylene-polystyrene copolymer and paclitaxel in varying ratios in order to vary the rates of drug release, and as also further taught by Pinchuk et al., to provide a wide variety of therapeutic agents including proteins as candidates for vascular treatments.

Response to Arguments

Applicant's arguments with respect to claims 37-40, 42-50 have been considered but are moot in view of the new ground(s) of rejection. New rejections based on newly found and applied prior art have been made.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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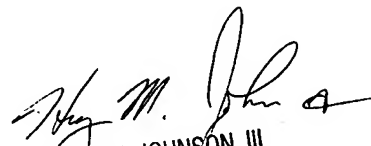
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aaron Roane
August 10, 2007

A. R.


HENRY M. JOHNSON, III
PRIMARY EXAMINER